

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Petition of TracFone Wireless, Inc. for	)	
Forbearance from 47 U.S.C. § 214(e)(1)(A) and	)	
47 C.F.R. § 54.201(i)	)	

**REPLY COMMENTS OF TRACFONE WIRELESS, INC.**

TracFone Wireless, Inc. (“TracFone”) hereby submits its reply to the only set of comments filed regarding its Eligible Telecommunications Carrier (“ETC”) Compliance Plan. Only one party -- the United States Telecommunications Association (“US Telecom”) -- filed comments on TracFone’s ETC Compliance Plan. Those comments did not address a single aspect of the Compliance Plan. Neither did those comments address any of the conditions imposed on TracFone by the Commission when it granted TracFone’s petition for forbearance. Instead, US Telecom used the occasion to reiterate a series of generalized objections to TracFone’s proposal to offer Lifeline programs through its prepaid wireless services -- objections which had been raised by US Telecom earlier in this proceeding.<sup>1</sup>

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<sup>1</sup> Verizon submitted comments in WC Docket No. 05-195 (Comprehensive Review of Universal Service Fund Management, Administration, and Oversight) in which it articulated objections to TracFone’s Lifeline proposals similar to those contained in US Telecom’s comments (See comments of Verizon, filed October 18, 2005, at 28-29). To the extent relevant, TracFone’s response herein to US Telecom’s comments is also applicable to Verizon’s comments in the Universal Service Management, Administration and Oversight docket.

**I. NO COMMENTERS OBJECT TO TRACFONE'S SUGGESTED CHANGES TO THE CONDITIONS CONTAINED IN THE FORBEARANCE ORDER**

By order issued September 8, 2005, the Commission granted TracFone's petition for forbearance (filed pursuant to Section 10 of the Communications Act, 47 U.S.C. § 160).<sup>2</sup> In granting TracFone's petition, the Commission found that grant of the petition would satisfy each prong of the statutory forbearance standard codified at Section 10(a) of the Communications Act (47 U.S.C. § 160(a)):

- (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;
- (2) enforcement of such regulation or provision is not necessary for the protection of consumers;
- (3) forbearance from applying such provision or regulation is consistent with the public interest.

Recognizing the importance of public safety and of safeguarding the availability of funds in the Universal Service Fund, the Commission imposed a series of conditions on its grant of forbearance, and directed TracFone to submit a compliance plan which explained in detail how it would comply with each of those specified conditions. Those conditions included the following:

- (1) access to basic and enhanced E-911 service immediately upon activation of Lifeline service;
- (2) certification from each Public Safety Answering Point (PSAP) of basic and E-911 availability;
- (3) provision of E-911-compliant handsets to Lifeline customers and replacement of non-compliant handsets without charge to customers;

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<sup>2</sup> Federal-State Board on Universal Service and Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i), FCC 05-165, released September 8, 2005 ("Forbearance Order").

- (4) Lifeline customers must self-certify under penalty of perjury upon service activation and annually thereafter that they are the head of their households and only receive Lifeline-supported service from TracFone;
- (5) customers' primary addresses must be tracked and not more than one Lifeline-supported service may be provided to customers at each residential address.<sup>3</sup>

On October 11, 2005, TracFone filed its Compliance Plan wherein it described in detail its plans for complying with each of the above-enumerated conditions. TracFone proposed two modest deviations from the conditions imposed, and explained why those deviations would not compromise or impair public safety and would not undermine TracFone's ability to provide Lifeline-eligible consumers with affordable, reliable, high quality wireless telecommunications services. Specifically, TracFone proposed that in lieu of obtaining certifications from each PSAP where it offers Lifeline service it would certify to the Commission the availability of emergency service access based on information filed quarterly with the Commission by TracFone's underlying carriers on the availability of E911 service. That information is contained in a publicly-available PSAP Registry maintained by the Commission. As described in TracFone's Compliance Plan, the Commission itself and, more importantly, TracFone's Lifeline consumers, would be fully assured of available emergency calling service based on information already on file with the Commission.<sup>4</sup>

In addition, TracFone proposed modification of the first condition so as to allow it to provide Lifeline service wherever 911 service is available, even if the local PSAPs are not yet equipped to receive E-911 calls. While E-911 service indisputably provides a level of public safety beyond that available from basic 911 service, basic 911 provides consumers with

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<sup>3</sup> Forbearance Order, at ¶¶ 16, 18.

<sup>4</sup> See TracFone Wireless, Inc.'s Compliance Plan, at 4-7.

important public safety access which they would not otherwise have available in areas where E-911 service has not yet been deployed.<sup>5</sup>

Significantly, no objections to either of TracFone's suggested deviations from the conditions set forth in the Forbearance Order were raised by US Telecom -- the only party commenting on TracFone's Compliance Plan. Given this absence of criticism, TracFone respectfully reiterates what it stated in its Compliance Plan -- TracFone's proposed manner for certifying availability of emergency services access will fully protect Lifeline customers, and provision of TracFone's Lifeline service in areas where 911 service, but not E-911 service, is available will provide consumers with an important measure of public safety not otherwise available to them, especially from locations away from their homes and wireline telephones.

**II. US TELECOM'S STATED CONCERNS ABOUT TRACFONE'S REPORTING OF LIFELINE CUSTOMERS AND HOW IT WOULD PASS THROUGH UNIVERSAL SERVICE FUND SUPPORT TO LIFELINE ELIGIBLE CONSUMERS ARE TIME-WORN AND GROUNDLESS**

US Telecom's comments do not address any condition imposed on TracFone in the Forbearance Order nor do they address any element of TracFone's Compliance Plan in which TracFone described how it would comply with each Commission-imposed condition. Instead, US Telecom used the guise of comments on the Compliance Plan to repeat previously-raised and already-discredited objections to TracFone's forbearance petition and to its applications for designation as an ETC in various states. Those objections were raised by US Telecom in eleventh hour ex parte letters dated August 17, 2005 and August 26, 2005, and were thoroughly addressed and refuted by TracFone in responsive ex parte letters dated August 22, 2005 and August 31, 2005.

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<sup>5</sup> *Id.*, at 11-14.

US Telecom's comments are consistent with its long-held view that only facilities-based wireline incumbent local exchange carriers who provide service on a postpaid basis should be designated as ETCs. Under the US Telecom view of Universal Service, ETCs, and Lifeline service, wireless carriers, resellers, and prepaid providers need not apply.

In its comments, US Telecom asks the Commission to direct TracFone to amend its Compliance Plan to specify the manner in which it would report its customers to the Universal Service Administrative Company ("USAC"), and distribute Lifeline support to its customers.<sup>6</sup> This request is inappropriate and unnecessary. It is inappropriate because the amendment requested has nothing to do with any of the conditions imposed by the Commission on TracFone which the Commission directed TracFone to address in its Compliance Plan. It is unnecessary because TracFone already has addressed how it will report to USAC and how it will distribute Lifeline support. In this regard, the Commission's (and US Telecom's) attention is directed to TracFone's Ex Parte Supplement filed July 15, 2005<sup>7</sup> and to its ex parte letter filed August 22, 2005. The July 15 Ex Parte Supplement describes in detail how each of TracFone's proposed Lifeline programs will operate. Under each of the plans described by TracFone, TracFone will receive USF support for each customer in the plan only for the months when that customer receives benefits under the plan. How TracFone will report to USAC is described in its August 22, 2005 letter as follows: "TracFone will (like all other ETCs) periodically submit to USAC Form 497 with information about the number of Lifeline customers served and the support levels per subscriber." As TracFone further explained, reimbursement will be based on that information -- as it is for every other ETC.

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<sup>6</sup> US Telecom comments at 1.

<sup>7</sup> Ex Parte Supplement to Petition for Forbearance and Petitions for Designation as an Eligible Telecommunications Carrier, CC Docket No. 96-45, filed July 15, 2005.

Notwithstanding US Telecom's continuing effort to forestall grant of TracFone's ETC applications by raising and re-raising the same objections, TracFone has explained in detail how each of its Lifeline plans will work and how it will report its Lifeline information to USAC so that appropriate reimbursement may be determined. These concerns first articulated by US Telecom last August did not warrant imposition of conditions or denial of TracFone's forbearance petition then, and they do not warrant either modification of its Compliance Plan or denial of its ETC applications now.

US Telecom complains that under the TracFone Pay-As-You-Go Wireless Lifeline Plan, customers receiving 300 minutes might use the entire 300 minutes in one month, and that TracFone might request reimbursement for subsequent months. However, as explained in the July 15 Ex Parte Supplement, that plan would normally sell for \$129.99 for one year's service and 300 minutes of use. In developing the Lifeline version of this plan, TracFone assumed a monthly USF support payment of \$10.00 -- or \$120 per year. By providing that plan to eligible Lifeline customers at no charge, TracFone would be applying one year's worth of USF support ( $\$10.00 \times 12 = \$120.00$ ), and contributing \$9.99. Thus, notwithstanding US Telecom's "red herring" objection, TracFone would be providing each customer with twelve months worth of USF support which it receives, irrespective of how many months it takes the customer to use the 300 minutes. In addition, without receiving any additional USF support, TracFone will allow Lifeline customers to purchase additional minutes on a "two for one" basis (*i.e.*, if the Lifeline customer purchases 100 additional minutes, it will receive 200 minutes).

US Telecom's stated concerns about TracFone's NET10 Pay-As-You-Go Wireless Lifeline Plan are equally unavailing. As described in the Ex Parte Supplement, that plan will include as an option an arrangement in which Lifeline customers will receive discount coupons

for each month they are enrolled in the plan. Each coupon will be redeemable for a \$10.00 discount below the NET10 standard price. \$30.00 of prepaid service could be purchased for \$20.00 with a coupon.<sup>8</sup> US Telecom's professed concern about this program is that some customers might fail to redeem their coupons. However, that concern is unfounded. TracFone would only report to USAC for reimbursement purposes coupons actually redeemed. If a customer receives twelve coupons, but during the year only redeems seven coupons, only seven months worth of support for that customer would be reported to USAC in the Form 497 submissions, and TracFone's reimbursement from the USF would be based upon the seven coupons redeemed -- not on the five coupons not redeemed.

Finally, US Telecom's attempt to "bootstrap" TracFone's long-held concerns about a numbers-based universal service contribution methodology to its proposal to offer Lifeline service as an ETC is unsupported and unsupportable.<sup>9</sup> The fact that TracFone as a prepaid provider is not able to bill and collect monthly telephone number-based universal service surcharges from customers has no relationship to whether it will be able to pass through universal service support to its Lifeline customers. As TracFone has explained previously, every penny of universal service support it receives will go directly to participants in its Lifeline program. TracFone will know who its Lifeline customers are and which customers received Lifeline benefits in any month. Those are the only customers for whom universal service fund reimbursement will be claimed.

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<sup>8</sup> This program will be similar to the Lifeline offerings available in post-paid environments. The \$10 coupons will entitle the customers to a discount or credit of \$10 on a monthly purchase. See Ex Parte Supplement at 5.

<sup>9</sup> US Telecom comments at 1-2.


## CONCLUSION

The objections to TracFone's Lifeline Compliance Plan articulated in US Telecom's comments are not valid objections to the Compliance Plan. Those comments bear no relevance to any of the conditions set forth in the Forbearance Order which the Commission directed TracFone to address in its Compliance Plan. Moreover, TracFone deems it very significant that no commenter found fault with either of TracFone's two suggested modifications to the conditions imposed by the Commission in the Forbearance Order. That absence of any objection should satisfy the Commission that TracFone's plans for confirming emergency service availability will be every bit as reliable and consistent with public safety as would obtainment of individual certifications from each of the thousands of PSAPs in communities where TracFone provides service -- and considerably less burdensome. Further, no one has disputed TracFone's suggestion that availability of its Lifeline service in areas where 911 service is available, but where PSAPs are not yet equipped to receive E911, will provide important consumer benefits and will promote public safety.

Accordingly, TracFone respectfully urges the Commission to swiftly approve its pending ETC applications so that it may commence Lifeline service at the earliest possible time.

Respectfully submitted,

**TRACFONE WIRELESS, INC.**

  
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December 12, 2005

## **CERTIFICATE OF SERVICE**

I, Michelle D. Guynn, an Executive Assistant with the law firm of Greenberg Traurig, LLP, hereby certify that on December 12, 2005, a true and correct copy of the foregoing Reply Comments of Tracfone Wireless, Inc. was filed via electronic mail through the **FCC's Electronic Comment File Submission** with Secretary, Marlene H. Dortch.

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